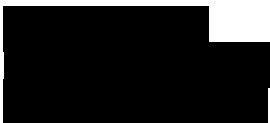


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2013-15463
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 14, 2013
County: Marquette

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on March 14, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payment Supervisor [REDACTED] [REDACTED].

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On May 21, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (Retro-MA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On December 19, 2011, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On September 26, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that her impairment lacked 12 months duration. (Depart Ex. A, pp 1-2).

- (3) On October 1, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On December 3, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 4, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of back pain, poor vision, shortness of breath, heart, cholecystectomy, pancreatitis, seizures, cerebrovascular accident (CVA), mood, bipolar, personality disorder, alcohol abuse, heroin abuse, hepatitis C, breast and uterine cancer.
- (7) Claimant is a 50 year old woman whose birthday is [REDACTED] Claimant is 5'2" tall and weighs 125 lbs. Claimant completed a high school equivalent education.
- (8) Claimant had not applied for Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain;

(2) the type/dosage/effectiveness/side effects of any medication that the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she does not remember the last time she was employed. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of

age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to back pain, poor vision, shortness of breath, heart, cholecystectomy, pancreatitis, seizures, cerebrovascular accident (CVA), mood, bipolar, personality disorder, alcohol abuse, heroin abuse, breast and uterine cancer.

On October 4, 2011, Claimant presented to the emergency department after drinking a fifth of alcohol stating that she is suicidal and homicidal. She was talking very loud and fast. Her thoughts were tangential and she was pacing around the room. She was not taking her medications consistently, so she had seizures the night prior. She also has residual headaches, blindness, and numbness from her stroke. She was admitted to the hospital for detox. Her nausea was significantly decreased with normal saline and Zofran. She was given Dilaudid for pain. Regarding her alcohol abuse/withdrawal, she never scored significantly on the scale to warrant much Librium and Clonidine. Her withdrawal symptoms were markedly shallow for the level of drinking she had been doing. She had no episodes of hematemesis during her stay. On the morning of her discharge, she was evaluated for possible psychiatric floor placement regarding a possible manic episode. The evaluation showed her behaviors were consistent with

mania, but were more likely related to substance abuse/withdrawal than true bipolar disorder. She was discharged in stable condition on October 7, 2011, with a diagnosis of acute pancreatitis, alcohol abuse/withdrawal, hematemesis, and bipolar disorder with possible active manic episode.

On October 27, 2011, Claimant went to the emergency department with acute abdominal pain indicative of acute pancreatitis. She was somewhat intoxicated. She was stabilized in the emergency department and put on full detox prophylaxis and admitted to the hospital. She was administered IV fluids and minimal pain medication and her abdominal symptoms abated. She was restarted on Neurontin. She was discharged on October 29, 2011 with a diagnosis of bipolar disorder, Hepatitis C, seizure disorder, a questionable history of a possible cerebrovascular accident in the past and a history of opiate addiction, including IV heroin.

On November 7, 2011, Claimant presented to the emergency department with bilateral upper quadrant pain, radiating to the back, with nausea and vomiting. She was admitted. Imaging suggested possible acute cholecystitis. She was diagnosed with pancreatitis with lipase of 3800. She has been continuing to drink alcohol. She was informed that she needed to stop drinking or recurrent pancreatitis would be a problem. She was discharged in stable condition on November 10, 2011 with a discharge diagnosis of acute pancreatitis.

On June 27, 2012, Claimant underwent an independent medical evaluation. Claimant stated she was seeking disability benefits due to her chronic mental health history and comorbidity of illnesses. Claimant indicated that she has been on numerous medications for both her seizures and bipolar disorder. She has not been able to afford any mental health care or any pharmacotherapy for several years. She reports severe periods of depression which leads her to become isolated in her room for several days. Although she has made numerous suicidal gestures/attempts, she denies any suicidal attempts since the late 90's. In reviewing Claimant's recent medical records, the psychologist noted repeated hospitalizations due to alcohol-related pancreatitis. During several of her medical hospitalizations, she was evaluated for inpatient psychiatric services on a number of occasions. According to her medical records, she was never deemed appropriate for inpatient psychiatric hospitalization. Several of her medical providers attempted to make arrangements for her to be followed up in a primary care clinic along with a program for medically underserved in order for her to receive treatment for her medical problems and psychiatric conditions. Unfortunately, she did not follow through with her referrals and was discharged from the clinic from the medically underserved due to her not showing up for appointments. The examining psychologist opined that Claimant would not be able to obtain/maintain any type of full-time competitive employment given her medical problems, mental health history, prior substance abuse problems and legal history. She would benefit from some form of benefits that would provide her with some means of medical care and/of psychiatric care. Her prognosis appears to be poor given her past history of noncompliant behavior. Diagnosis: Axis I: Bipolar Disorder, most recent episode depressed; Nicotine Dependence; Alcohol Abuse; Opioid Abuse; Axis III: Chronic pancreatitis, seizure

disorder, hepatitis C; Axis IV: Health concerns, occupational problems, extensive history of sexual abuse, legal history, and limited emotional support system; Axis V: GAF=50.

On September 19, 2012, Claimant went to the emergency department with abdominal pain similar to her pain when she had previous apparent episodes of pancreatitis. She stated she had been sober for almost a year until a couple of weeks ago when she had a couple of drinks. Approximately five days ago she started having abdominal pain. She has had nausea and vomiting the past five days. She was admitted to the hospital. She was discharged on September 21, 2012 in stable condition with a discharged diagnosis of acute chronic pancreatitis secondary to alcohol use.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to back pain, poor vision, shortness of breath, heart, cholecystectomy, pancreatitis, seizures, cerebrovascular accident (CVA), mood, bipolar, personality disorder, alcohol abuse, heroin abuse, hepatitis C, breast and uterine cancer.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 11.00 (neurological) and Listing 12.00 (mental disorders), were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain,

which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 50 years old and was, thus, considered to be approached advanced age for MA-P purposes. Claimant has a high school equivalent education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, the evidence reveals that Claimant suffers from back pain, poor vision, shortness of breath, heart, cholecystectomy, pancreatitis, seizures, cerebrovascular accident (CVA), mood, bipolar, personality disorder, alcohol abuse, heroin abuse, hepatitis C, breast and uterine cancer. Claimant testified during the hearing that she is capable of performing a "sit down job." Moreover, she admits that she is still occasionally drinking alcohol. But a review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.12, finds that Claimant is disabled for purposes of the MA-P program at Step 5.

Claimant has presented the required competent, material and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Therefore, Claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

However, the Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the

regulations require a sixth step to determine the materiality of DAA to a person's disability.

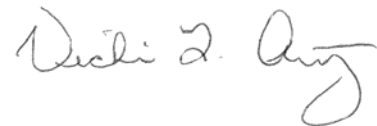
Claimant's testimony and the information indicate that Claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability and she admits that she is continuing to drink alcohol despite her numerous hospitalizations for acute chronic pancreatitis secondary to alcohol intoxication.

The federal law does not permit a finding of disability for persons whose primary impairment is substance abuse. P.L. 104-121. In addition, a client must follow prescribed medical treatment in order to be eligible for disability benefits. If prescribed medical treatment is not followed, the client cannot meet the disability standard. 20 CFR 416.930. Claimant has failed to follow prescribed medical treatment, including stopping drinking, and continues to treat herself with alcohol.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P benefit programs.

Accordingly, it is ORDERED the Department's determination is **AFFIRMED**.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 14, 2013

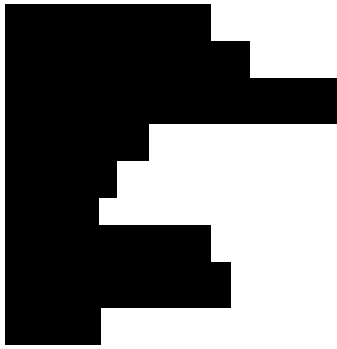
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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